

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

at Huntington

**DAWN DENISE McCOMAS,
Executrix of the Estate of
BILLIE PLYMALE,**

Plaintiff,

v.

CIVIL ACTION NO. 3:13-cv-14953

KIRT THOMAS MILLER, D.P.M.,

Defendant.

PLAINTIFF'S REBUTTAL DISCLOSURE OF EXPERT WITNESSES

Pursuant to this Court's Scheduling Order, the Plaintiff hereby discloses the following expert witnesses who are anticipated to testify at the trial of this matter:

1. Steven Hajdu, M.D.
1759 Drumcliff Court
Westlake Village, CA 91361
- *Pathologist*
- *Curriculum vitae attached hereto.*
- *Report will be supplemented upon review of the complete opinions of Dr. Balko.*

Dr. Hadju is being named in the matter to rebut the opinions of Defendant's expert witness, M. Gregory Balko, M.D. As per Dr. Balko's report, he intends to review additional information and supplement his opinions accordingly.

Dr. Hadju is unable to provide a report at this time as Dr. Balko's opinions and report is only a preliminary, partial report and is not finalized pending his review of the original tissue slides in this matter.



Dr. Hadju's opinions will be based upon his education, experience, review of deposition testimony, review of Mrs. Plymale's medical records and pathology slides and the finalized report of M. Gregory Balko. M.D.

Dr. Hadju charges \$400.00 per hour with a \$1,000.00 retainer for his initial review.

The Plaintiff reserves the right to supplement this disclosure following the taking of further discovery depositions in this matter.

The Plaintiff hereby reserves the right to name additional or alternative expert witnesses as discovery progresses.

The Plaintiff hereby reserves the right to elicit expert testimony from any and all physicians, nurses, health care personnel or medical experts who were involved or who have knowledge of the occurrences which are the subject of this litigation.

The Plaintiff hereby reserves the right to call at trial any expert witness named by any other party to this civil action.

The Plaintiff hereby reserves the right to name rebuttal witnesses as may be necessary.

The Plaintiff hereby reserves the right to supplement this disclosure should further discovery justify same.

**DAWN DENISE McCOMAS, Executrix of
the Estate of BILLIE PLYMALE,
By Counsel**

s/ Matthew C. Lindsay

Matthew C. Lindsay, J.D., M.D.

WV Bar No. 7896

Richard D. Lindsay, M.D., J.D.

WV Bar No. 2216

Tabor Lindsay & Associates

Post Office Box 1269

Charleston, West Virginia 25325

304/344-5155

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

at Huntington

DAWN DENISE McCOMAS,
Executrix of the Estate of
BILLIE PLYMALE,

Plaintiff,

v.

CIVIL ACTION NO. 3:13-cv-14953

KIRT THOMAS MILLER, D.P.M.,

Defendant.

CERTIFICATE OF SERVICE

I, Matthew C. Lindsay, J.D., M.D., do hereby certify that I electronically filed the "*Plaintiff's Disclosure of Rebuttal Expert Witnesses*" with the Court using the CM/ECF system. and that a Notice of Electronic Filing of this document will be electronically served by the Clerk of the Court upon Tamela J. White, Esquire. I further certify that true and exact copies of this document have been served upon counsel of record this 10th day of April, 2014, by depositing the same in the regular course of the United States mail, postage prepaid:

Tamela J. White, Esquire
Farrell, White & Legg PLLC
Post Office Box 6457
Huntington, WV 25772-6457

s/ Matthew C. Lindsay, J.D., M.D.
Matthew C. Lindsay, J.D., M.D.

FARRELL, WHITE & LEGG PLLC

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SAMANTHA THOMAS-BUSH¹

OF COUNSEL:
CHRISTINA L. SMITH

TELEPHONE (304) 522-9100
FACSIMILE (304) 522-9162

FILE #: 1051.0001

April 21, 2014
Via facsimile

Matthew Lindsay, Esquire
Tabor Lindsay & Associates
P.O. Box 1269
Charleston, WV 25325
mlindsay@taborlindsay.com

**Re: *Dawn McComas, Executrix of the Estate of Billie Plymale*
v. Kurt Thomas Miller, D.P.M.
United States District Court, Southern District of West Virginia
*Civil Action No. 3:13-cr-14953***

Dear Matt:

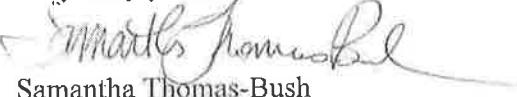
I have had the opportunity to review your rebuttal expert witness disclosure of Steven Hadju, M.D. As you know, Rule 26 requires 1) a statement of the opinions the witness will express and the basis and reasons for them; 2) the facts or data considered by the witness in forming them; 3) any exhibits that will be used by the witness; 4) the witness's qualifications, including publications within the last 10 years; 5) a list of the other cases during the previous four years in which the witness has testified; and 6) a statement of the witness's compensation.

You have provided the rebuttal witness's qualifications and compensation. Please provide a report regarding his opinions, the facts or data considered by the witness in forming them, any exhibits he intends to use in this matter, and a list of the other cases in which he has testified during the previous four years.

By your disclosure of Steven Hadju, M.D., it is presumed that he has reviewed the pathology slides. Please provide the written disclosure of his findings at this time and the information required by Rule 26. If we do not receive his findings within 15 days, we will be forced to file a *Motion to Exclude* the same.

Please feel free to contact me if you have any questions.

Very truly yours,


Samantha Thomas-Bush

cc: Tamela J. White, Esq. (via e-mail)

(FOBAG27)

¹ Also admitted in Kentucky ² Also admitted in Ohio

EXHIBIT

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04/21/2014 MON 15:30

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 *** FAX TX REPORT ***

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FAX: (304) 522-9162

TELECOPY TRANSMITTAL SHEET*

DATE: April 21, 2014

TO: Matthew C. Lindsay, Esquire

FAX NUMBER: (304) 344-5188

FROM: Samantha Thomas-Bush, Esquire

NO. OF PAGES (INCLUDING THIS PAGE): 2

RE: *Dawn Denis, McComas, Executrix of the Estate of Billie Plymale v. Kirt Thomas Miller, D.P.M.*

FILE NO.: 1051.0001

SPECIAL INSTRUCTIONS/COVER MESSAGE: *Please see attached. Thank you.*HARD COPY: WILL FOLLOW or WILL NOT FOLLOWBY: MAIL, OVERNIGHT OTHER**IF YOU HAVE ANY PROBLEMS WITH THE RECEIPTION OF THE FOLLOWING PAGES, PLEASE CALL ANNE HONAKER AT (304) 781-1801.**

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SAMANTHA THOMAS-BUSH¹

OF COUNSEL:
CHRISTINA L. SMITH¹

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FACSIMILE (304) 522-9162

FILE #: 1051.0001

May 9, 2014
Via facsimile

Matthew Lindsay, Esquire
Tabor Lindsay & Associates
P.O. Box 1269
Charleston, WV 25325
mlindsay@taborlindsay.com

**Re: Dawn McComas, Executrix of the Estate of Billie Plymale
v. Kurt Thomas Miller, D.P.M.
United States District Court, Southern District of West Virginia
Civil Action No. 3:13-cr-14953**

Dear Matt:

This letter will confirm our conversation of this afternoon where we discussed the expert witness report of Dr. Steven Hadju, who was disclosed as a rebuttal witness in plaintiff's case.

Your position is that you are not required to provide any opinions of Dr. Hadju until Dr. Balko has reviewed the original pathology slides this coming Tuesday, May 13, 2014, despite the fact that Dr. Balko has provided opinions of the recut pathology slides in accordance with the scheduling order. I disagreed with you, and took the position that Dr. Hadju is required to file opinions as a rebuttal witness, but he could supplement those opinions if they changed after reviewing any additional opinions Dr. Balko may disclose after reviewing the original pathology slides.

We discussed that because of our disagreement, it may be necessary to file a *Motion to Exclude* the same, as previously contemplated in my correspondence of April 21, 2014, where I requested supplementation of Dr. Hadju's report, and you agreed that I should file the Motion if I thought it necessary.

I will be filing the Motion on Monday, May 12, 2014.

Very truly yours,



Samantha Thomas-Bush

cc: Tamela J. White, Esq. (via e-mail)

[[08574803]]

¹ Also admitted in Kentucky — ² Also admitted in Ohio

EXHIBIT

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*** TX REPORT ***

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TELECOPY TRANSMITTAL SHEET*

DATE: May 9, 2014

TO: Matthew C. Lindsay, Esquire

FAX NUMBER: (304) 344-5188

FROM: Samantha Thomas-Bush, Esquire

NO. OF PAGES (INCLUDING THIS PAGE): 2

RE: *Dawn Denis, McComas, Executrix of the Estate of Billie Plymale v. Kir Thomas Miller, D.P.M.*

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